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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

Written statement submitted by the Transnational Radical Party, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[6 April 1999]

GE.99-11947 (E)

1. The right of conscientious objection to military service as a fundamental human right is recognized and guaranteed on the international level, in particular by the United Nations Human Rights Committee (General Commitment No. 22 (48) 1993), the Commission on Human Rights (resolution 1995/83 of 8 March 1995), the Organization on Security and Cooperation in Europe (Document of the Copenhagen Meeting on the Human Dimension of 29 June 1990), the Council of Europe (recommendation No. R (87) 8 of the Council of Ministers of 9 April 1987; Rodota report adopted by the Parliamentary Assembly of the Council of Europe (document 6752 of 29 January 1993), the European Parliament (resolutions of 13 October 1989 and 11 March 1993; recommendation of 18 January 1994).

2. In the Russian Federation the right to conscientious objection is guaranteed by the Constitution adopted on 12 December 1993: "A citizen of the Russian Federation whose convictions and faith are at odds with military service and also in other cases stipulated by the federal law shall have the right to the substitution of an alternative civil service for military service" (art. 59.3). According to the current federal law "On military conscription and military service", all men between 18 and 27 who do not have any reason for exemption are subject to obligatory military service. The federal law "On alternative civil service", the draft of which was adopted by the State Duma at first reading in December 1994, was rejected at second reading on 7 October 1998 and has still not been approved. Therefore, there exists no legal procedure for granting alternative civilian service for conscientious objectors. Adopting and introducing such a law was among the obligations assumed by the Russian Federation on joining the Council of Europe in February 1996.

3. At the same time, according to its article 15, "The Constitution of the Russian Federation shall have supreme legal force and direct effect, and shall be applicable throughout the entire territory of the Russian Federation." Therefore, the right to conscientious objection guaranteed by the Constitution represents, from the juridical point of view, an inalienable right of citizens even in the absence of a special federal law on alternative civilian service.

4. In practice, the citizen's right to conscientious objection is being widely contested by military commissariats (territorial bodies of the Defence Ministry responsible for military call-up) and by recruitment commissions formed by local civil authorities twice a year for the period of conscription campaigns. In violation of the Constitution, recruitment commissions take decisions to recruit conscientious objectors. Conscientious objectors whose rights have been violated in this way may appeal to the courts against these decisions. However, the courts judge mostly in favour of the recruitment commissions and against the conscientious objectors, deciding not on the basis of the constitutional norms but on the traditional idea of military serving being a "holy duty of every genuine man". Such anti-constitutional decisions are taken by courts of various levels, including the Supreme Court of the Russian Federation. Thus, on 23 November 1997, Alexey Antropov from the Republic of Kabardino-Balkaria received the answer to his appeal from the Supreme Court, which stated that the respective norm of the Constitution has no direct implementation in the absence of a federal law on alternative civilian service. In other cases, the courts explain their negative decisions

by stating that the applicant "did not manage to prove his convictions in an appropriate way", although article 29.3 of Russian Constitution states clearly: "No one may be coerced into expressing one's views and convictions or into renouncing them."

5. According to article 25 of the federal law "On military conscription and military service", in case of appeal to the courts against a decision of a recruitment commission, the implementation of the latter's decision should be suspended until the last instance court has decided on the matter. In the majority of cases, however, military commissariats act on an illegal basis, violating the law: assisted by the militia, they bring, by force and intimidation, conscientious objectors who are awaiting a court's decision on their appeal to barracks.

6. The exact number of conscientious objectors in Russia is unknown, but it is sure that there are thousands of them. According to information from the General Staff of the Defence Ministry of the Russian Federation, during the autumn 1997 conscription campaign alone (October-December 1997) there were 1,061 formal declarations of conscientious objection submitted to the recruitment commissions.

7. Since 1996, military commissariats act on the basis of a secret directive of the Defence Ministry, which prescribes that the military commissariats accept declarations of conscientious and send conscientious objectors to serve in units where the service does not involve "holding and using arms", giving them a written guarantee if necessary. From the juridical point of view, however, this directive does not solve the problem of conscientious objection, because military service in any unit assumes taking an obligatory military oath, obeying orders and undergoing military training. In practice, the conscripts who agree to be dispatched to such units find themselves doing military service in so-called "construction battalions" in conditions much worse than in any other military service, subjected to torture and ill-treatment. However, the applicants do not always find themselves exactly in the units where they have supposedly been sent by the recruitment commission.

8. In many cases conscientious objectors have been criminally prosecuted under article 328 of the Criminal Code of the Russian Federation ("evading military or alternative civilian service"). This happens in spite of the Constitutional Court's decision of 22 May 1996 which states that conscientious objection declared by a draftee according to the Constitution does not constitute a crime under article 328.

9. Vadim Gesse (Noginsk, Moscow region) declared in December 1995 to the recruitment commission his intention to perform alternative civilian service. Nevertheless, he received an order to join the army. After he did not appear at the recruitment point, on 25 January 1996 he was arrested, spent 40 days in prison, and was released only after interventions by Amnesty International, the Transnational Radical Party and a press campaign. On 13 May 1996 he was fully acquitted by the City Court of Noginsk.

10. Alexander Seregin, a Hare Krishna believer from Moscow, declared his conscientious objection to the recruitment commission in spring 1996, demanding the alternative civilian service. After he did not report to the recruitment point, a criminal lawsuit was filed against him. On 24 October 1996, the Cheremushkinsky Inter-municipal Court of Moscow sentenced him conditionally to two years in prison. However, on 24 December 1996, Moscow City Court quashed this sentence and acquitted Alexander Seregin.

11. On 4 April 1997, the Tushinsky Inter-municipal Court of Moscow refused the appeal of Vasily Bazhenov against a recruitment commission which had ignored his conscientious objection and decided to send him to the army. On 2 June 1997, Moscow City Court confirmed the Tushinsky Court's decision. Since Bazhenov continued to insist on his constitutional right to conscientious objection, on 5 January 1998, the Tushinsky prosecutor filed a criminal lawsuit against him under article 328 of the Criminal Code. Vasily Bazhenov is currently awaiting trial.

12. On 27 February 1998 Alexander Borodin, accused under article 328 of the Criminal Code of "evading military service", was sentenced by the Golovinsky Inter-municipal Court of Moscow to a fine of 1,000 roubles (about 2,800 US dollars) for his conscientious objection.

13. Igor Smorodin (Sterlitamak, Republic of Bashkortostan) requested the recruitment commission in December 1996 substitution of military service by alternative civilian service. He did not obtain any answer and appealed to the court. The lawsuit has not yet been examined. On 5 November 1997, before any court decision on the matter, the recruitment commission took a new decision to send Smorodin to military service. On 21 November 1997, the City Court of Sterlitamak decided to reject Smorodin's appeal in absentia; the court did not even informed Igor Smorodin that his case was going to be discussed. On 22 December 1997, Igor Smorodin was informed about the criminal lawsuit against him on the charge of "evading military service" (art. 328 of the Criminal Code). On 3 February 1998, he was arrested and put in prison where he faced pressure and intimidation to force him to serve in the military. On 6 February 1998, he was released, but the criminal case against him was closed only in May 1998.

14. In Novosibirsk at least two other conscientious objectors were sentenced in 1997 to fines for "evading military service".

15. In April 1998 in Moscow, Alexey Bykov was accused of "evading from military service". His criminal case was closed at the end of December 1998, after several court sessions.

16. Vadim Nazarov, a Jehovah's Witness from Sochi (Krasnodar territory), was arrested for his conscientious objection on 29 April 1998. On 28 July he was sentenced by the Central District Court of Sochi to one year of prison camp under article 328. This sentence was quashed on 9 September 1998 by the Krasnodar Territorial Court and Vadim Nazarov has been released after four and a half months in jail.

17. On 21 October 1998 Sergej Sarychev was sentenced conditionally for conscientious objection by Golovinsky Inter-municipal Court of Moscow to six months of imprisonment and amnestied.

18. It is necessary to anticipate, however, that in reality the number of sentenced and/or imprisoned conscientious objectors could be much higher. It is therefore necessary to stress that serious and systematic violations of the fundamental right to conscientious objection are committed by the authorities of the Russian Federation against thousands of young Russian citizens. This is a flagrant violation both of the international obligations of the Russian Federation and its own Constitution.

19. The Transnational Radical Party appreciates the attention paid by the Commission on Human Rights to violations of the right to conscientious objection in the Russian Federation. We believe that the Commission should recommend that the General Assembly and the Secretary-General take urgent action to put an end to the violations of this fundamental right in the Russian Federation. We therefore call upon the Commission to adopt a strong resolution on conscientious objection at the present session.